

(vi) *Pending* means that the matter was in fact referred to or under consideration by persons within the employee's area of official responsibility.

(4) Measurement of the two-year restriction period. The two-year period under paragraph (b)(2) of this section is measured from the date when the employee's official responsibility in a particular area ends, not from the termination of service in the Office, unless the two occur simultaneously. The prohibition applies to all particular patents or patent applications subject to such official responsibility in the one-year period before termination of such responsibility.

(c) *Former employees of the Office.* This section imposes restrictions generally parallel to those imposed in 18 U.S.C. 207(a) and (b)(1). This section, however, does not interpret these statutory provisions or any other post-employment restrictions that may apply to former Office employees, and such former employees should not assume that conduct not prohibited by this section is otherwise permissible. Former employees of the Office, whether or not they are practitioners, are encouraged to contact the Department of Commerce for information concerning applicable post-employment restrictions.

(d) An employee of the Office may not prosecute or aid in any manner in the prosecution of any patent application before the Office.

(e) Practice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility.

§ 11.11 Administrative suspension, inactivation, resignation, and readmission.

(a) A registered attorney or agent must notify the OED Director of his or her postal address for his or her office, up to three e-mail addresses where he or she receives e-mail, and business telephone number, as well as every change to any of said addresses or telephone numbers within thirty days of the date of the change. A registered attorney or agent shall, in addition to any notice of change of address and telephone number filed in individual patent applications, separately file

written notice of the change of address or telephone number to the OED Director. A registered practitioner who is an attorney in good standing with the bar of the highest court of one or more States shall provide the OED Director with the State bar identification number associated with each membership. The OED Director shall publish from the roster a list containing the name, postal business addresses, business telephone number, registration number, and registration status as an attorney or agent of each registered practitioner recognized to practice before the Office in patent cases.

(b) *Administrative suspension.* (1) Whenever it appears that a registered patent attorney, a registered patent agent or a person granted limited recognition under § 11.9(b) has failed to comply with § 11.8(d), the OED Director shall publish and send a notice to the attorney, agent or person granted limited recognition advising of the non-compliance, the consequence of being administratively suspended under paragraph (b)(5) of this section if non-compliance is not timely remedied, and the requirements for reinstatement under paragraph (f) of this section. The notice shall be published and sent to the attorney, agent or person granted limited recognition by mail to the last postal address furnished under paragraph (a) of this section or by e-mail addressed to the last e-mail addresses furnished under paragraph (a) of this section. The notice shall demand compliance and payment of a delinquency fee set forth in § 1.21(a)(9)(i) of this subchapter within sixty days after the date of such notice.

(2) In the event a registered patent attorney, registered patent agent or person granted limited recognition fails to comply with the notice of paragraph (b)(1) of this section within the time allowed, the OED Director shall publish and send in the manner provided for in paragraph (b)(1) of this section to the attorney, agent, or person granted limited recognition a Rule to Show Cause why his or her registration or recognition should not be administratively suspended, and he or she no longer be permitted to practice before the Office in patent matters or in any way hold himself or herself out as

being registered or authorized to practice before the Office in patent matters. The OED Director shall file a copy of the Rule to Show Cause with the USPTO Director.

(3) Within 30 days of the OED Director's sending the Rule to Show Cause identified in § 11.11(b)(2), the registered patent attorney, registered patent agent or person granted limited recognition may file a response to the Rule to Show Cause with the USPTO Director. The response must set forth the factual and legal bases why the person should not be administratively suspended. The registered patent attorney, registered patent agent or person granted limited recognition shall serve the OED Director with a copy of the response at the time it is filed with the USPTO Director. Within ten days of receiving a copy of the response, the OED Director may file a reply with the USPTO Director that includes documents demonstrating that the notice identified in § 11.11(b)(1) was published and sent to the practitioner in accordance with § 11.11(b)(1). A copy of the reply by the OED Director shall be served on the registered patent attorney, registered patent agent or person granted limited recognition. When acting on the Rule to Show Cause, if the USPTO Director determines that there are no genuine issues of material fact regarding the Office's compliance with the notice requirements under this section or the failure of the person to pay the requisite fees, the USPTO Director shall enter an order administratively suspending the registered patent attorney, registered patent agent or person granted limited recognition. Otherwise, the USPTO Director shall enter an appropriate order dismissing the Rule to Show Cause. Nothing herein shall permit an administratively suspended registered patent attorney, registered patent agent or person granted limited recognition to seek a stay of the administrative suspension during the pendency of any review of the USPTO Director's final decision.

(4) An administratively suspended attorney, agent or person granted limited recognition remains responsible for paying his or her annual practitioner maintenance fee required by § 11.8(d).

(5) An administratively suspended attorney, agent or person granted limited recognition is subject to investigation and discipline for his or her conduct prior to, during, or after the period he or she was administratively suspended.

(6) An administratively suspended attorney, agent or person granted limited recognition is prohibited from practicing before the Office in patent cases while administratively suspended. An attorney, agent or person granted limited recognition who knows he or she has been administratively suspended under this section will be subject to discipline for failing to comply with the provisions of this paragraph.

(c) *Administrative inactivation.* (1) Any registered practitioner who shall become employed by the Office shall comply with § 10.40 of this subchapter for withdrawal from the applications, patents, and trademark matters wherein he or she represents an applicant or other person, and notify the OED Director in writing of said employment on the first day of said employment. The name of any registered practitioner employed by the Office shall be endorsed on the roster as administratively inactive. The practitioner shall not be responsible for payments of the annual practitioner maintenance fee each complete fiscal year while the practitioner is in administratively inactive status. Upon separation from the Office, the practitioner may request reactivation by completing and filing an application, Data Sheet, signing a written undertaking required by § 11.10, and paying the fee set forth in § 1.21(a)(1)(i) of this subchapter. Upon restoration to active status, the practitioner shall be responsible for paying the annual practitioner maintenance fee for the fiscal year in which the practitioner is restored to active status. An administratively inactive practitioner remains subject to the provisions of the Mandatory Disciplinary Rules identified in § 10.20(b) of this subchapter, and to proceedings and sanctions under §§ 11.19 through 11.58 for conduct that violates a provision of the Mandatory Disciplinary Rules identified in § 10.20(b) of this subchapter prior to or during employment at the Office. If, within 30 days after separation from

the Office, the practitioner does not request active status or another status, the practitioner will be endorsed on the roster as voluntarily inactive and be subject to the provisions of paragraph (d) of this section.

(2) Any registered practitioner who is a judge of a court of record, full-time court commissioner, U.S. bankruptcy judge, U.S. magistrate judge, or a retired judge who is eligible for temporary judicial assignment and is not engaged in the practice of law may request, in writing, that his or her name be endorsed on the roster as administratively inactive. Upon acceptance of the request, the OED Director shall endorse the name of the practitioner as administratively inactive. The practitioner shall not be responsible for payment of the annual practitioner maintenance fee for each complete fiscal year the practitioner is in administratively inactive status. Following separation from the bench, the practitioner may request restoration to active status by completing and filing an application, Data Sheet, signing a written undertaking required by § 11.10, and paying the fee set forth in § 1.21(a)(1)(i) of this subchapter. Upon restoration to active status, the practitioner shall be responsible for paying the annual practitioner maintenance fee for the fiscal year in which the practitioner is restored to active status.

(d) *Voluntary inactivation.* (1) Except as provided in paragraph (d)(4) of this section, any registered practitioner may voluntarily enter inactive status by filing a request, in writing, that his or her name be endorsed on the roster as voluntarily inactive. Upon acceptance of the request, the OED Director shall endorse the name as voluntarily inactive.

(2) A registered practitioner in voluntary inactive status shall be responsible for payment of the annual practitioner maintenance fee for voluntary inactive status set forth in § 1.21(a)(7)(ii) of this subchapter for each complete fiscal year the practitioner continues to be in voluntary inactive status.

(3) A registered practitioner who seeks or enters into voluntary inactive status is subject to investigation and discipline for his or her conduct prior

to, during, or after the period of his or her inactivation.

(4) A registered practitioner who is in arrears in paying annual practitioner maintenance fees or under administrative suspension for annual practitioner maintenance fee delinquency is ineligible to seek or enter into voluntary inactive status.

(5) A registered practitioner in voluntary inactive status is prohibited from practicing before the Office in patent cases while in voluntary inactive status. A practitioner in voluntary inactive status will be subject to discipline for failing to comply with the provisions of this paragraph. Upon acceptance of the request for voluntary inactive status, the practitioner must comply with the provisions of § 10.40 of this subchapter.

(6) Any registered practitioner whose name has been endorsed as voluntarily inactive pursuant to paragraph (d)(1) of this section and is not under investigation, not subject to a disciplinary proceeding, and not in arrears for the annual practitioner maintenance fee for voluntary inactive status may be restored to active status on the register as may be appropriate provided that the practitioner files a written request for restoration, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, including information and material pertaining to the practitioner's moral character and reputation under § 11.7(a)(2)(i) during the period of inactivation, a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office, and pays the fees set forth in §§ 1.21(a)(7)(iii) and (iv) of this subchapter.

(e) *Resignation.* A registered practitioner or a practitioner recognized under § 11.14(c), who is neither under investigation under § 11.22 for a possible violation of the Mandatory Disciplinary Rules identified in § 10.20(b) of Part 10 of this subchapter, subject to discipline under §§ 11.24 or 11.25, nor a practitioner against whom no probable cause has been found by a panel of the Committee on Discipline under § 11.23(b), may resign by notifying the

OED Director in writing that he or she desires to resign. Upon acceptance in writing by the OED Director of such notice, that registered practitioner or practitioner under §11.14 shall no longer be eligible to practice before the Office but shall continue to file a change of address for five years thereafter in order that he or she may be located in the event information regarding the practitioner's conduct comes to the attention of the OED Director or any grievance is made about his or her conduct while he or she engaged in practice before the Office. The name of any registered practitioner whose resignation is accepted shall be removed from the register, endorsed as resigned, and notice thereof published in the Official Gazette. Upon acceptance of the resignation by the OED Director, the practitioner must comply with the provisions of §10.40 of this subchapter.

(f) *Administrative reinstatement.* (1) Any registered practitioner who has been administratively suspended pursuant to paragraph (b) of this section, or who has resigned pursuant to paragraph (e) of this section, may be reinstated on the register provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, demonstrated compliance with the provisions of §§11.7(a)(2)(i) and (iii), and paid the fees set forth in §§1.21(a)(7)(i), (a)(9)(i) and (a)(9)(ii) of this subchapter. Any person granted limited recognition who has been administratively suspended pursuant to paragraph (b) of this section may have their recognition reactivated provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, demonstrated compliance with the provisions of §§11.7(a)(2)(i) and (iii), and paid the fees set forth in §§1.21(a)(8)(i), (a)(9)(i) and (a)(9)(ii) of this subchapter. A practitioner who has resigned or was administratively suspended for two or more years before the date the Office receives a completed application from the person who resigned or was administratively suspended must also pass the registration examination under §11.7(b)(1)(ii). Any reinstated practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the

period of his or her administrative suspension or resignation.

(2) Any registered practitioner whose registration has been administratively inactivated pursuant to paragraph (c) of this section may be reinstated to the register as may be appropriate provided within two years after his or her employment with the Office ceases or within two years after his or her employment in a judicial capacity ceases the following is filed with the OED Director: a request for reinstatement, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, and the fee set forth in §1.21(a)(9)(ii) of this subchapter. Any registered practitioner inactivated or reinstated is subject to investigation and discipline for his or her conduct before, during, or after the period of his or her inactivation.

[73 FR 67757, Nov. 17, 2008]

§§ 11.12–11.13 [Reserved]

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

(a) *Attorneys.* Any individual who is an attorney as defined in §11.1 may represent others before the Office in trademark and other non-patent matters. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent matters. Registration as a patent practitioner does not itself entitle an individual to practice before the Office in trademark matters.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent matters, except that individuals not attorneys who were recognized to practice before the Office in trademark matters under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark matters. Except as provided in the preceding sentence, registration as a patent agent does not itself entitle an individual to practice before the Office in trademark matters.

(c) *Foreigners.* Any foreign attorney or agent not a resident of the United